

REMARKS

In the Office Action, the specification is objected; claims 1-20 are rejected under 35 U.S.C. §112, second paragraph; claims 1-35 are rejected under 35 U.S.C. §102 and/or §103; and claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting. Claims 1, 6, 7, 12, 13, 17-22 and 24-35 have been amended. Applicants believe that the rejections have been overcome or are improper in view of the amendments and for the reasons set forth below.

At the outset, Applicants have provided an abstract in response to the Patent Office's objection to the specification as discussed above. In view of same, Applicants believe that the objection to the specification should be withdrawn.

In the Office Action, claims 1-20 are rejected under 35 U.S.C. §112, second paragraph. In response, Applicants have amended the claims as discussed above. The changes to the claims were made for clarification purposes and thus were not intended to narrow and/or disclaim any claimed subject matter in view of same. Applicants believe that the pending claims satisfy the requirements under 35 U.S.C. §112, second paragraph and thus, respectfully request that this rejection be withdrawn.

In the Office Action, claims 1-5, 7-11, 13-16, 18-20, 26, 29, 32 and 35 are rejected under 35 U.S.C. §102 in view of U.S. Patent No. 5,407,661 ("*Simone*"). The Patent Office essentially asserts that *Simone* discloses each and every feature of the pending claims at issue. Applicants believe that this rejection is improper.

Of the pending claims at issue, claims 1, 7, 13, 18 and 20 are the sole independent claims. Claim 1 recites a dried pet food that includes, in part, a matrix with a protein source, a carbohydrate source and insoluble fiber wherein the dried pet food has a length of at least 15 mm, a width of at least 13.5 mm, and a thickness of at least 12 mm. Claim 7 recites a dried pet food that includes, in part, a matrix with a protein source, a carbohydrate, an insoluble fiber wherein the dried pet food has a density of less than 20.5 lbs/ft³. Claim 13 recites a dried pet food that includes, in part, a matrix with a protein source, a carbohydrate source and insoluble fiber wherein the dried pet food has a density of less than 20.5 lbs/ft³, a length of at least 15 mm, a width of at least 13.5 mm, and a thickness of at least 12 mm.

Claim 18 recites a dried pet food that includes, in part, at least 25% by weight of a kibble with a matrix with a protein source, carbohydrate source and insoluble fiber wherein the dried pet food has a density of less than 20.5 lbs/ft³. Claim 20 recites a method of reducing calculus and plaque build-up on a pet's teeth including administering to a pet a dried pet food such that the pet chews same. The dried pet food includes, in part, a matrix with a protein source, a carbohydrate source and an insoluble fiber wherein the dried pet food has a density of less than 20.5 lbs/ft³.

Applicants have surprisingly discovered that by reducing the density of dried pet food and/or providing a larger product, that an improved tartar removing product can be provided for pets. This is true even if the product does not include a texturizing agent. See, Specification, page 4, line 32 to page 5, line 3.

At the outset, *Simone* is deficient with respect to the dried pet food feature as required by the claimed invention. Contrary to the Patent Office's interpretation, the clear emphasis of *Simone* is on chew products and not food products.

Indeed, *Simone* discloses that its chew products were fed to dogs to supplement a normal can diet. See, *Simone*, column 8, lines 26-30. One cannot compare a product, such as *Simone*, to the dried pet food product of the claimed invention which is intended for feeding a meal to the pet and at the same time encouraging longer chewing. In *Simone*, the pet, at best, chews on the product while getting hungrier as it chews.

Further, the Patent Office's interpretation of the insoluble fiber content of *Simone* based on what wheat generally contains is misplaced. What *Simone* teaches is the use of high cellulosic and thus high insoluble fiber content as the preferred fiber source of *Simone* is corn cob fractions. *Simone* merely teaches that this type of fiber source is suitable for making chew products. Nowhere does *Simone* suggest that this level and type of fiber source is suitable for making dried pet food products. See, *Simone*, column 3, lines 18-24. The Patent Office is comparing "apples to oranges" as it attempts to compare what *Simone* discloses to the insoluble fiber feature of the claimed invention.

In addition, *Simone* is deficient with respect to the claimed density features. Indeed, the high insoluble fiber content of *Simone* effectively teaches away from the density features of the

claimed invention. In this regard, *Simone* suggests increasing density levels due to, for example, the hygroscopic (i.e., moisture absorbing) nature of its high insoluble fiber content.

The increased density level is also evident from the Example as disclosed in *Simone* at columns 7 and 8. The chew product is produced in pieces that are each five grams in weight. Further, the chew product has a final moisture content of 20% by weight wherein the chew product is extruded into a one inch wide ribbon at 0.25 inches in thickness. The dried extrudate sections were further subdivided into 2.75 inch pieces to prepare the final chew product. Thus, the volume of the chew product can be calculated at 0.688 cubic inches (or 11.27 cubic centimeters).

This translates into a density of 0.44 grams/cubic centimeters (or 27.7 pounds per cubic feet). Indeed, at this level, the density was at its lowest as the 5 gram piece of chew product was in its fully expanded and dried form as discussed above. Therefore, this further demonstrates that *Simone* provides an increased density level as compared to the claimed invention that requires a density of less than 20.5 pounds per cubic feet.

Moreover, the high insoluble fiber content and density levels as disclosed in *Simone* clearly defeat a beneficial effect of the claimed invention to reduce tartar and plaque build-up by providing a dried pet food product that facilitates prolonged chewing. Such high levels of insoluble fiber content and density as disclosed in *Simone* would also undesirably reduce the shelf life of the dried pet food product of the claimed invention. Based on at least these differences between *Simone* and the claimed invention as discussed above, the Patent Office's inherency arguments are questionable at best. Therefore, *Simone* fails to disclose or arguably suggest the claimed invention.

Accordingly, Applicants respectfully request that the anticipation rejection in view of *Simone* be withdrawn.

In the Office Action, claims 7-12, 18, 28-29 and 34-35 are rejected under 35 U.S.C. §102 in view of U.S. Patent No. 4,743,460 ("*Gellman*"). The Patent Office essentially asserts that *Gellman* discloses each and every feature of the pending claims at issue.

Applicants respectfully submit that this rejection is improper in law or fact. Of course, anticipation exists where the reference necessarily teaches each and every feature of the claimed invention. Indeed, the Patent Office admits that the insoluble fiber feature of the rejected claims

is not disclosed in *Gellman*. In this regard, the Patent Office admits that the insoluble fiber feature of the rejected claims is not specifically mentioned as an ingredient; yet the Patent Office still maintains its anticipation rejection with respect to *Gellman*.

Further, Applicants submit that the Patent Office's interpretation of *Gellman* regarding insoluble fiber is misplaced. Although *Gellman* discloses flour and other farinaceous material, *Gellman* is not concerned with whether or not the fiber that is provided is soluble or insoluble. In this regard, *Gellman* merely uses starchy substances to aid in the cost reduction of the product. See, *Gellman*, column 10, lines 10-14.

Based on at least these reasons, Applicants believe that *Gellman* fails to disclose or arguably suggest the claimed invention. Therefore, Applicants respectfully submit that *Gellman* fails to anticipate the claimed invention.

Accordingly, Applicants respectfully request that the anticipation rejection in view of *Gellman* be withdrawn.

In the Office Action, claims 1-20, 21, 26, 29, 32 and 35 are rejected under 35 U.S.C. §102 in view of U.S. Patent No. 4,743,460 ("*Hand*"). The Patent Office essentially asserts that *Hand* discloses each and every feature of the pending claims at issue. Applicants believe that this rejection is improper.

Contrary to the Patent Office's interpretation, *Hand* fails to disclose or arguably suggest the dimensional features of the claimed invention. For example, *Hand* fails to teach any specifics regarding the length of a pet food product with respect to the width and thickness. Applicants question how *Hand* could conceivably convey the length feature of the claimed invention based on its sole teaching regarding the diameter of a disc shaped pellet as suggested by the Patent Office.

Further, what *Hand* clearly emphasizes is a pet food product that has an expanded striated structural matrix which fracture when chewed the pet. In this regard, *Hand* clearly fails to teach or arguably suggest the matrix characteristic features of the claimed invention which include density and size characteristics, such as length, width and thickness. Again, the emphasis of *Hand* is clearly on internal structural characteristics of a matrix (i.e., expanded striated structural matrix). Indeed, one of the surprising discoveries of the claimed invention is that by simply increasing the size and/or reducing the density of the pet food product the resultant product will

remove more plaque and tartar build-up as compared to similar pet food products. *See*, Specification, page 3, lines 1-5.

Based on at least these reasons, *Hand* fails to disclose or arguably suggest the claimed invention. Therefore, Applicants respectfully submit that *Hand* fails to anticipate the claimed invention.

Accordingly, Applicants respectfully request that the anticipation rejection in view of *Hand* be withdrawn.

In the Office Action, claims 21, 24-25, 27-28, 30-31 and 33-34 are rejected under 35 U.S.C. §102 in view of U.S. Patent No. 6,455,083 ("*Wang*"). The Patent Office essentially asserts that *Wang* discloses each and every feature of the pending claims at issue. Applicants believe that this rejection is improper.

Each of the rejected claims depend from one of independent claims 1, 7, 13, 18 and 20. Yet, the Patent Office does not appear to reject any of independent claims 1, 7, 13, 18 and 20 in view of *Wang*. Indeed, the rejected claims incorporate each of the features of their respective independent claims as a matter of law. Therefore, Applicants believe that *Wang* fails to disclose or suggest the subject matter as defined in claims 21, 24-25, 27-28, 30-31 and 33-34 for substantially the same reasons as *Wang* fail to disclose or suggest the subject matter as defined by their respective independent claims as the Patent Office even appears to admit.

Accordingly, Applicants respectfully submit that the rejection in view of *Wang* be withdrawn.

In the Office Action, claims 1-6, 13-17 and 19-20 are rejected under 35 U.S.C. §103 in view of *Gellman*. The Patent Office essentially asserts that *Gellman* discloses or suggest the claimed invention. Applicants believe that *Gellman* is deficient with respect to the claimed invention, at a minimum, for substantially the same reasons as discussed above. Therefore, Applicants respectfully submit that *Gellman* fails to render obvious the claimed invention.

Accordingly, Applicants respectfully request that the obviousness rejection in view of *Gellman* be withdrawn.

In the Office Action, claims 22-23 are rejected under 35 U.S.C. §103 in view of *Hand* and further in view of U.S. Patent No. 5,887,749 ("*Schommer*"). The Patent Office primarily

relies on *Hand* and thus relies on *Schommer* to remedy the deficiencies of *Hand*. Applicants believe that this rejection is improper.

At the outset, *Hand* is deficient with respect to the claimed invention, at a minimum, for substantially the same reasons as discussed above. Further, the Patent Office cannot rely solely on *Schommer*, even if combinable, to remedy the deficiencies of *Hand*. Indeed, the Patent Office merely relies on *Schommer* for its purported teachings regarding mixing both wet and dry pet foods. Therefore, Applicants do not believe that one skilled in the art would be inclined to modify *Hand* in view of *Schommer* to arrive at the claimed invention. Based on at least these reasons, Applicants respectfully submit that *Hand* and *Schommer*, even if combinable, fail to render obvious the claimed invention.

Accordingly, Applicants respectfully request that the obviousness rejection in view of *Hand* and *Schommer* be withdrawn.

In the Office Action, claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting. More specifically, claims 1-20 are rejected in view of claims 1-24 of U.S. Application No. 09/154,646; claims 1-20 are rejected in view of claims 1-32 of U.S. Patent Application No. 10/052,949; and claims 1-20 are rejected in view of claims 1-33 of U.S. Patent Application No. 10/037,941. In response, Applicants submit that this rejection has been made provisional. In this regard, upon allowance of the co-pending patent applications, Applicants plan to file a terminal disclaimer(s) after such time to address the obviousness-type double patenting rejections in view of same.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204

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